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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Day of general discussion on article 3 of the Covenant: equal right of men and women to the enjoyment of economic, social and cultural rights set forth in the Covenant (Monday, 13 May 2002)

Women's right to adequate housing

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The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations.

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Introduction

1. The purpose of this paper is to show the influence of gender factors on the right to housing for women. In the first part I will go into the normative contents of the right as it stands today and determine to what extent equal enjoyment of the right to housing for men and women is achieved. The focus will be on the concept of adequacy, since the way in which adequacy is perceived may be different according to gender. Furthermore, some aspects that constitute adequacy turn out differently for women.

2. How gender aspects influence housing rights will be illustrated by looking at different groups of women that have specific vulnerabilities as far as housing is concerned.

3. Finally, some attention will be paid to the aspect of violations of women's housing rights. In particular, violations by non-State actors will be highlighted.

Normative contents of the right

The concept of adequacy

4. Already a great deal of international standard-setting as regards the right to housing has taken place. It has become clear that housing is much more than shelter, and that the right is fulfilled only when a certain level of adequacy is achieved. In the framework of the United Nations the concept of adequacy has been studied and it has been determined that several elements form part of it.[1] The question is whether these elements of adequacy are equally tailored to the situation for men and for women and whether they work out in the same way for both sexes. Moreover, it should be determined if there are still other factors that have not yet been incorporated in the concept of adequacy that play a specific role as far as women's housing is concerned. These questions will be discussed in the subsequent sections.

Legal security of tenure

5. Procuring a legal, safe place to stay is in many countries very difficult for women because there are gender biased laws or financial, cultural or traditional impediments that prevent women from owning or renting a place to live. Particularly in developing countries, many women have no other choice than to live in areas where there is a danger of eviction, because settlement is illegal or because these sites have been earmarked by the Government for other purposes than housing. Girls and women suffer disproportionately when they are evicted. Eviction and ensuing homelessness entail gender specific physical, economic, social and psychological harm. Security of tenure therefore, seems to be even more important for women than for men.

Availability of services and facilities

6. Most women's lives are home-centred. It is the place where they raise their children and do their household chores. If basic services and facilities are inadequate, this has far more repercussions for women than for men. Where water is not readily available, girls and women are supposed to walk (sometimes long distances) and fetch the water in (heavy) pitchers they

have to carry. When the water is contaminated, women are the first to catch diseases because they continuously come into contact with the water while cleaning the house and washing the clothes. The same holds true when the surroundings are filthy because the drainage system is inadequate (or even non-existent) and there is no garbage collection.

Affordability

7. The affordability level is higher for men than for women because in general the economic and financial position of men is better. Generally speaking, women have had less education and consequently will have lower-paid jobs. Moreover, there may be cultural impediments to women working in salaried jobs or working full-time. When the affordability of living costs is based on the average income, it should be borne in mind that women earn less than the average. What is supposed to be affordable housing for a family unit in the traditional sense is by no means affordable for women or for families headed by single mothers.

Habitability

8. A house should provide adequate space and protection against cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors. An inadequate housing situation is worse for women because they live and work in and around the home. For instance, if there is no gas or electricity to cook on and indoor wood fires are used where there is no adequate ventilation system, women will suffer sooner from respiratory diseases than men.

Accessibility

9. The problems women are faced with in gaining access to housing and land are manifold, yet in general women are not listed as a disadvantaged group. Access to credits and loans is reserved for people with steady, well-paid jobs or who have collateral. Most of the time, women do not meet these requirements.

Location

10. Since women are traditionally burdened with the task of raising the children, the proximity of day-care centres and schools is a prerequisite if women have to work for their living. Living near polluted sites will have a greater effect on the health of those women who remain in and around the house all day.

11. Due to the fact that women are a minority in decision-making bodies, they hardly ever have a say in the matter of location, building requirements for homes or general infrastructure. Since they are the ones who spend the greater part of their lives at home, they also have specific knowledge of environmental planning and building. This knowledge is wasted when women are not involved in policy organs.

Security and dignity

12. Security in the home means to be free from being harassed, battered, humiliated or subjugated; to be regarded as a person entitled to full human rights. In some situations, women's security and dignity are endangered by acts of the public authorities, e.g., in the case of government-authorized evictions.

13. More common, however, are situations in which women are threatened in their own homes by private persons. Sometimes landlords abuse the vulnerable situation of single women, or employers may harass the domestic servants who live in their homes. These situations are dwarfed, however, by the global-scale problem of domestic violence. This type of violence is not only prevalent in all countries of the world, but also in all layers of society. Their relatives and in-laws but, most frequently, their male partners will abuse women physically, sexually and emotionally. The home can be a very dangerous place for girls and women in developed and developing countries alike.[2] Violence at home crowds out any aspect of adequacy that may have been achieved. Without safety, adequacy remains illusory.

14. When victims of domestic violence decide that they cannot take it anymore, they are often faced with the choice between staying in the abusive relationship or living in the streets, because shelters for battered women are not always available or may be filled to capacity. In this way, domestic violence can also be a cause of homelessness for women.

Privacy

15. Privacy is generally understood as a right to have a sphere of non-interference vis-à-vis the public authorities. In cases of domestic violence, the right to privacy is not to the benefit of women and girls, but rather a tool in the hands of the perpetrators. Batterers enjoy impunity because the authorities, including the police, refrain from interfering in what they consider to be a private matter.

16. Privacy in the sense of the opportunity to withdraw from others is very difficult to realize in situations of inadequate housing. Especially when extended families live in cramped quarters this may lead to psychological problems for women who are confined to the home.

Independence

17. The concept of housing is still based too much on the traditional pattern for a family: a man, woman and children living somewhere as an independent unit. However, for many women all over the world their housing conditions are greatly influenced by the fact that they live in a state of constant dependency on others. This dependency may last from birth till death.[3] Extensive discrimination against women continues to exist. Women are looked upon as inferior to men because of their gender, and because of this alleged inferiority they are subjected to, and thus made dependent on, the men of their community. This is apparent with regard to the right to housing from the fact that many women will never be in charge of their own living conditions.

18. For legal, cultural or economic reasons, many single women cannot live independently because they cannot (afford to) own or rent housing or it is inconceivable in their community that they live on their own. The mobility rights of married women are legally restricted in many countries because a woman is obliged to live where her husband settles down. For some groups of women the dependency as regards their housing situation is even worse than for others because they are compelled to live in households of which they are not really a part and in which their voices are not heard. Divorcees, widows and single mothers may be forced to find shelter with relatives or in-laws who regard them as a burden. Domestic servants, especially those who find employment far away from home, are forced to live in the house of their employer, sometimes relegated to sleep in sheds and attics.

19. Victims of domestic violence who flee their homes, refugees and internally displaced women are dependent on the services provided by safe-houses, refugee camps or whatever temporary shelter is provided by the authorities.

20. This state of dependency with regard to housing should be taken into account. It cannot be shaken off as a temporary or emergency situation because it is the reality for millions of women all over the world, either during a certain period of their lives or throughout their lifetime. Housing cannot be adequate if the enjoyment of the right is dependent on another person or persons.

Vulnerable groups

Girls

21. Though girls are not a vulnerable group per se, their housing situation as adults is greatly influenced by their childhood. Girls are modelled and trained in order to fulfil stereotyped ideals. Desirable "feminine" characteristics, like pliability and submissiveness are stimulated, while "masculine" characteristics such as independence and initiative are suppressed. This moulding influences the enjoyment of various human rights. Particularly relevant in the framework of housing are the right to education and the right to employment.

22. In developing countries, poor families will give preference to educating boys over girls if they do not have the financial means to give all their children an education. An education for girls is not considered to be overly important since girls are predestined to become housewives and mothers, not to have a career.

23. In developed countries girls legally have the same access to education and job training as boys, but in practice their education and job training is focused on certain qualities and jobs that are considered as suitable for their gender. They are directed towards jobs in the service sector, in which the care concept plays an important role; women take care of children, the sick and the elderly. Though there is nothing wrong with providing services, and this is in fact much needed, society values this type of work less than so-called masculine jobs and, consequently, the salary level of these "female" types of job is lower. Women earn "individual" salaries rather than "family" salaries.

24. The disadvantage girls have with regard to education and job training makes itself felt most acutely when they are grown women and they cannot earn wages that enable them to afford adequate housing by themselves.

Homeless girls and women

25. Homelessness is far more dangerous for women and girls than for men and boys, because the former are more vulnerable to acts of violence and sexual abuse when they are living in the streets. The protection of four walls that form a barrier against the outer world has disappeared. Families are scattered, with the result that social networks dissolve.

26. Moreover, the "normal" chores, like providing food, clothing and medical attention to the family, are still expected of a woman when she has become homeless, particularly when she has to take care of her children. It goes without saying that these tasks must be performed under the most arduous circumstances.

Divorcees and widows

27. In certain parts of the world divorce and widowhood may cause homelessness or inadequate housing for women. This is particularly true for societies where women are considered to be outsiders in the families they live with. When a girl is born, she is regarded as a burden for her family, because she is yet another mouth to feed while nothing is to be expected from her in return. She is raised with the single goal of getting her married and when she does marry, she will move away and become a member of her husband's family. In order to prevent the property owned by the family, especially land and home, being dispersed on the death of the father, inheritance laws, traditions and customs deny the daughter an equal share with her brother(s). By way of compensation, she may leave her home with a dowry, consisting of jewellery or consumer goods, but she is not entitled to any real estate. Once married, the woman remains an outside element in the family of her in-laws. She will have access to a home and may use the land, but she will be denied a share of her husband's property when he divorces her or when he dies. This is an awkward predicament for divorcees and widows, since they cannot claim access to a place to live either from their own blood relatives or from their in-laws. Especially when the dowry consisted of consumer goods that have long since perished, they are left empty handed.

28. If her relationship with her in-laws is good, the widow may stay with them. If a woman has an adult son, she may have the option of living with him and his family. Sometimes it is possible for her to return to the natal home and live under the roof of her father or brother. Some women become unpaid domestic servants in relatives' homes in return for shelter and food, while in some societies remarriage is feasible. When none of the options mentioned above are open to them, women are turned out onto the streets.

Domestic servants

29. Daughters of poor families may decide to contribute financially by finding a paid job. Since many of them lack any formal education, the obvious choice is to find employment as a domestic servant. When these girls have to look for employment far away from home,

sometimes even abroad, they may find themselves in a very vulnerable position. In their employers' homes their housing situation is sometimes very bad, because the habitability of their living quarters leaves much to be desired. Some girls have to sleep in kitchens or sheds, sometimes even together with animals. Worse still is the situation where girls are abused by their employer.[4]

Female refugees and internally displaced women

30. Women who have been forced to leave their homes because of forced evictions, natural or human-made disasters, or internal or international armed conflict situations, may find shelter in centres and camps provided by Governments, or national and international non-governmental organizations. Though women and children form the large majority of refugees and internally displaced persons, camps are not tailored to gender-specific needs. Women are forced to live at close quarters with unrelated males, often sharing with them latrines and washing facilities.[5] Girls and women feel unsafe because many camps are not illuminated at night. Camps are often situated in dangerous locations, especially near war zones. Sometimes girls and women have to leave the camp and walk long stretches in order to fetch water or to gather firewood, thus becoming easy targets for enemy attacks. Inside the centres and camps many women are abused and/or sexually exploited by fellow refugees.[6]

Single mothers

31. While women in general are poorer than men, single mothers are the poorest of the poor. It is estimated that at the moment world-wide one third of all families are headed by single mothers and their number is still growing. Women who have to cope with raising their children alone are faced with gender-biased laws, customs and stereotyped ideas that get in the way of their taking proper care of their families. Their average income is low and their career prospects are bleak, because they lack the required qualifications for better paid jobs. Many do not even work or only part-time, because there are not enough day-care facilities, or the ones available are very expensive. They have difficulty in gaining access to housing and when they succeed in renting a house, they may well lose it again when the rent is raised.[7]

32. The support these women need consists of a combination of housing subsidies, childcare facilities and job training. Only in this way these women have a chance to escape from the vicious circle they find themselves in.

Violations of women's housing rights

Violations by non-State actors

33. As has become clear from the above, in many cases women's housing rights are violated by private persons. Domestic violence is a case in point, where the abuse causes homelessness or inadequate housing conditions, because the core element of security is annihilated.

34. Individuals are responsible for wrecking the security and dignity of women who find shelter in centres and camps for refugees and internally displaced persons.

35. Landlords may violate housing rights by increasing the rent exorbitantly, and some of them abuse the predicament single women find themselves in by threatening them with eviction and demanding sexual favours when the rent is overdue.

36. Communities violate women's housing rights by their traditional views and "personal" laws that favour men and stipulate that women cannot inherit, own or rent land or housing. They fail to see that the world is a changing place and culture should change with it. The sheer number of families headed by single mothers makes it impossible to stick to certain traditions. Failure to adapt not only does injustice to the women, but also to those who depend on them.

Violations by States

37. The most obvious situation whereby housing rights are violated by States is where forced evictions are carried out by State agents themselves, or when the authorities condone the evictions carried out by others. In view of the vulnerable position of homeless girls and women, Governments should take particular care that, when relocation of people is unavoidable, secure and adequate alternative housing is made available.

38. In cases where the direct perpetrators are private parties, States are also responsible for the violations when they do not show due diligence.[8] The housing rights of women should be protected against abusive husbands, relatives, landlords and employers. If violence occurs, States must investigate, prosecute and punish the perpetrators. In any case, there should be enough and adequate shelters where women and children can find at least temporary relief and security.[9] Moreover, new insights are needed with regard to housing rights in cases of domestic violence. Laws are called for that do justice to the situation of the victim. She and her children should be the ones who may stay in the family home, while the perpetrator is faced with interdicts that compel him to leave the premises, or even the whole neighbourhood.[10]

Conclusion

39. Access to and enjoyment of housing is different for women and men. Traditional and cultural views on women's role in society handicap women and place them at a disadvantage when they try to gain access to housing. Women who have to fend for themselves, like divorcees, widows and single mothers, are particularly hard hit when they are faced with low wages, cultural impediments as regards owning or renting a house, or gender biased inheritance laws. The concept of affordability of housing is often based on the average income, which is in fact the average income earned by men, not by women.

40. Lack of services and facilities hits women harder than men because of the stereotyped role women play in society. Even in developed countries, women are still the ones who are burdened with household chores and taking care of the children, the sick and the elderly. In countries where facilities like running water, drainage, heating, ventilation and garbage collection are inadequate or non-existent, women not only have an extra burden, but they also run the risk of their health being impaired.

41. For women, security and dignity first and foremost determine the adequacy of housing. Abuse at home, especially at the hands of the partner, renders the housing situation inadequate, no matter how luxurious or well-equipped a house may be.

42. Closely interlinked with security is independence. Women, and their children, should have the choice and the possibility to live on their own. Only an independent, individual right to adequate housing can enable women to be in charge of their own housing situation.

Notes

[1] In Global Strategy for Shelter to the Year 2000, of 1988 (A/43/8/Add.1), the United Nations General Assembly already considered that adequacy is determined by several factors like privacy, security, basic infrastructure and location, all at a reasonable cost. In General Comment No. 4 on the right to adequate housing (E/1992/23), the Committee on Economic, Social and Cultural Rights recognizes that adequate housing includes legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

[2] See the reports of the Special Rapporteur on Violence against Women, Ms. Radhika Coomaraswamy, e.g., her preliminary report (E/CN.4/1995/42).

[3] The Special Rapporteur on the right to adequate housing, Justice Rajindar Sachar, explains this most aptly when he states that women are essentially homeless because: "in most countries of the world women have neither a right to the home in which they were born nor to the home they live in after marriage", E/CN.4/Sub.2/1995/12 of 12 July 1995, para. 46.

[4] Particularly well-known are cases of Philippine girls who were abused by their Kuwaiti employers.

[5] Accommodation problems are not only found in poor countries, but also in industrialized countries like the Netherlands. Female asylum-seekers complain about sexual intimidation and abuse, which is caused primarily by the fact that unaccompanied women are not housed separately, but have to live in quarters together with unrelated males or even males who have been their enemies in their home countries. Most centres have communal showers and latrines (i.e. not segregated by sex), which increases the feeling of insecurity. See, for example, *Vluchtelingen Organisaties in Nederland* (Refugee Organizations in the Netherlands), *Vrouwen in Asielzoekkerscentra; een ongevraagd advies* (Women in Asylum-seekers' Centres; Unasked-for Advice), Utrecht, December 1996.

[6] Both UNHCR and the Representative of the Secretary-General on internally displaced persons are well aware of the problems girls and women face. See, for example, the UNHCR Guidelines on the Protection of Refugee Women, EC/SCP/67, 1991, and the reports of Mr. Francis Deng, Representative of the Secretary-General on internally displaced persons.

[7] For example, in Toronto, Canada, twice as many single-parent families have to make use of the shelter system than two-parent families. In 1988, 24 per cent of the families in the shelters were female-headed; in 1996, this number had increased to 37 per cent. See, Taking Responsibility for Homelessness; An Action Plan for Toronto, Report of the Mayor's Homelessness Action Task Force, January 1999, pp. 27 and 54.

[8] This became clear by the *Velásquez-Rodriguez v. Honduras* case where the Inter-American Court of Human Rights ruled that the Government was held responsible for the disappearance of individuals, although the actual abductions had been carried out by private persons. Judgement of 29 July 1988, OAS/ser.L.V./III.19, doc. 13.

Also article 18 of the Maastricht Guidelines on "Acts by Non-State Entities": "The obligation to protect includes the State's responsibility to ensure that private entities or individuals, ... do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise *due diligence* in controlling the behaviour of such non-State actors" (emphasis added), Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, SIM Special No. 20, Utrecht, 1998, p. 9.

[9] See Maastricht Guidelines, articles 22-32 on "Remedies and Other Responses to Violations", SIM Special No. 20, pp. 10-12.

[10] A recent example of such a law is the German *Gewaltschutsgesetz (Gesetz zur Verbesserung des zivilgerichtlichen Schutzes bei Gewalttaten und Nachstellungen sowie zur Erleichterung der Überlassung der Ehewohnung bei Trennung)* that entered into force on 1 January 2002.